

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
LAREDO DIVISION

RODOLFO MEDINA
Plaintiff.

v.

JOHN DOE AND KILGORE & KILGORE
TRANSPORT, LLC
Defendant.

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§

CIVIL ACTION NO. _____

DEFENDANT'S NOTICE OF REMOVAL

TO THE HONORABLE JUDGE OF SAID COURT:

Now comes Defendant, **KILGORE & KILGORE TRANSPORT, LLC** (herein "Defendant") pursuant to 28 U.S.C.A. §§ 1332 and 1446, and gives notice to this Court of the removal of the case styled: *Rodolfo Medina vs John Doe and Kilgore & Kilgore Transport, LLC*, Cause No. 2017CVA001187D3 in the 341st Judicial District Court of Webb County, Texas (herein the "Lawsuit") to the United States District for the Southern District of Texas, Laredo Division, and respectfully shows as follows:

The Parties & Procedural History

1. *Rodolfo Medina* (herein "Plaintiff") the Plaintiff in the Lawsuit, which was filed on June 16, 2017 in the 341st Judicial District Court of Webb County, Texas. In his Lawsuit, Plaintiff make allegations of negligence against the Defendants, seeking actual money damages in excess of \$75,000, costs of court, attorneys' fees, and pre- and post-judgment interest.
2. Defendant, *Kilgore & Kilgore Transport, LLC*, was served with the lawsuit on July 28, 2017. Defendant has entered an appearance in the Lawsuit with the state court.
3. Defendant, John Doe, has not been served. Plaintiff has not requested service.

Removal Based on Diversity Jurisdiction

3. Defendant files this Notice of Removal as required by 28 U.S.C. § 1446, removing this case to the U.S. District Court for the Southern District of Texas, Laredo Division because it falls within this Court's diversity subject-matter jurisdiction under 28 U.S.C. § 1332.

4. Defendant's filing of this Notice of Removal is timely under 28 U.S.C. § 1446(b) because the Lawsuit and citation in this action were first served on July 28, 2017, by service upon Defendant, making the last day to remove August 28, 2017.

5. Removal is proper because there the amount in controversy exceeds \$75,000, excluding interest, costs and attorneys' fees. *See* 28 U.S.C. § 1332(a) and there is complete diversity between the Plaintiffs and Defendant. *See* 28 U.S.C. § 1332(a):

- a) Plaintiff states in his Petition that he is a resident the State of Texas.
- b) Defendant, Kilgore & Kilgore Transport, LLC, a limited liability corporation organized and existing under the laws of Arkansas, whose home office is 159 Cash St., Harrison, Boone County, Arkansas 72601.
- c) Defendant, "John Doe", while it is alleged that his identity and residence are unknown. The identity of "John Doe" is Larry J. Larue. Mr. Larue's residence is 22 Meadow Lark, Harrison, Arkansas 72601.

Venue is Proper

6. Venue of this removed action is proper in this Court because this district and division embrace the place where the state-court removed action has been pending. 28 U.S.C.A. §1441(a).

No Waiver

7. By virtue of this removal petition, Defendant does not waive its right to assert any claims, pleas, or motions, including, if any, pleas in abatement, motions to compel arbitration, and motions permitted by Rule 12 of the Federal Rules of Civil Procedure.

Defendant Has Met the Other Requirements for Removal

8. Defendant has complied with all applicable provisions of 28 U.S.C.A. §1441 *et seq.*, the applicable Federal Rules of Civil Procedure, and the Local Rules in this District. Defendant attaches hereto those materials required to be filed upon removal in accordance with Rule 81 of the Local Rules for the United States District Court, Southern District of Texas. Additionally, the filing fee of \$400.00 has been tendered to the Clerk of the United States District Court for the Southern District of Texas, Laredo Division, along with the original Notice of Removal.

Attachments

9. Pursuant to 28 U.S.C. § 1446(a) and Local Rule 81, attached are the following documents:

All executed process in the case.	Exhibit "A"
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Copy of pleadings asserting causes of action, e.g., petitions, counter-claims, Cross-actions, third-party actions, interventions and all answers to such pleadings.	Exhibit "B"
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Copy the State Court Docket Sheet	Exhibit "C"
-----------------------------------	-------------

A list of all counsel of record, including addresses, telephone numbers and parties represented.	Exhibit "D"
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A copy of the "Notice to State Court of Removal to Federal Court" (without exhibits) that will be filed with the Clerk of the 341 st Judicial District Court of Webb County, Texas.	Exhibit "E"
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Notice to State Court

10. Pursuant to 28 U.S.C. § 1446(d), Defendant shall promptly serve a copy of this Notice of Removal on Plaintiff and shall promptly file a copy of this Notice of Removal with the Clerk of the 341st Judicial District Court of Webb County, Texas. A copy of the “Notice to State Court of Removal to Federal Court” (without exhibits) that will be filed with the District Clerk of the 341st Judicial District Court of Webb County, Texas is attached as Exhibit “E”.

WHEREFORE, PREMISES CONSIDERED, Defendant **KILGORE & KILGORE TRANSPORT, LLC** prays that this Honorable Court take full jurisdiction of this action as if it had been originally filed here to the exclusion of any further proceedings in the state court, in accordance with law, and for any such other or further relief to which Defendant may show itself justly entitled to herein.

Respectfully submitted,

/s/ SHAN MARIE EGLISKIS

SHAN MARIE EGLISKIS
Texas State Bar No. 24059712
LAW OFFICE OF MARK E. MACIAS
1100 NW Loop 410, Suite 370
San Antonio, Texas 78213
Telephone: 210-949-0166
Facsimile: 855-949-1338
Email: eglissl@nationwide.com
ATTORNEY FOR DEFENDANTS
JOHN DOE AND KILGORE & KILGORE
TRANSPORT, LLC

CERTIFICATE OF SERVICE

I certify that on August 24th, 2017, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Kelly Forester
MATTHEWS & FORESTER
3027 Marina Bay Drive, Suite 320
League City, Texas 77573
281-535-3000
281-535-3010 Fax
Email: kforester@matforlaw.com
ATTORNEY IN CHARGE FOR PLAINTIFF

/s/ SHAN MARIE EGLISKIS

SHAN MARIE EGLISKIS

EXHIBIT A

[Skip to Main Content](#) [Logout](#) [My Account](#) [Search Menu](#) [New Civil Search](#) [Refine Search](#) [Back](#)
Location : All Courts [Help](#)**REGISTER OF ACTIONS**

CASE NO. 2017CVA001187D3

RODOLFO MEDINA vs. JOHN DOE, KILGORE & KILGORE TRANSPORT, LLC §
§
§
§
§

Case Type: **Injury or Damage - Motor Vehicle**
Subtype: **Motor Vehicle Accident**
Date Filed: **06/16/2017**
Location: **-341st District Court**

PARTY INFORMATION

Defendant	DOE, JOHN	Attorneys DANIEL J GUARASCI <i>Retained</i> 2109490166 x8559491338(W)
Defendant	KILGORE & KILGORE TRANSPORT, LLC	DANIEL J GUARASCI <i>Retained</i> 2109490166 x8559491338(W)
Plaintiff	MEDINA, RODOLFO	KELLY FORESTER <i>Retained</i>

EVENTS & ORDERS OF THE COURT**OTHER EVENTS AND HEARINGS**

06/16/2017 **Civil Case Filed (OCA)**

06/16/2017 **Original Petition**
PLAINTIFF'S ORIGINAL PETITION, CCIS, AND FILING LETTER FROM ATTORNEY KELLY FORESTER (LV)

06/21/2017 **Calendar Call**
CALENDAR CALL MAILED TO ATTORNEY KELLY FORESTER AND ATTACHED A COPY TO THE CITATION ISSUED. (LV)

06/21/2017 **Citation-Issuance**
(2) CITATIONS ISSUED AS TO KILGORE & KILGORE TRANSPORT, LLC BY SERVING TEXAS SECRETARY OF STATE AND HELD BY DISTRICT CLERK (LV). WAITING ON A SELF ADDRESSED STAMPED ENVELOPE FROM ATTORNEY KELLY FORESTER. (LV)
***CITATIONS PLACED IN PRIVATE SERVER BOX ON 07/27/2017. (LT)

→ 06/21/2017 **Citation**
KILGORE & KILGORE TRANSPORT, LLC Served 07/28/2017
Returned 08/11/2017

→ 08/11/2017 **Citation Return-Executed**
CITATION RETURN EXECUTED AS TO KILGORE & KILGORE TRANSPORT LLC, BY SERVING TEXAS SECRETARY OF STATE. (DOS 7/28/17).

08/18/2017 **Answer-Defendant**
DEFENDANT, KILGORE & KILGORE TRANSPORT, LLC'S VERIFIED ORIGINAL ANSWER, RULE 193.7 NOTICE, JURY DEMAND, AND REQUEST FOR DISCLOSURE.

09/18/2017 **Calendar Call** (1:30 PM) (Judicial Officer Palomo, Beckie)

EXHIBIT B

SERVE
2017CVA001187D3

CITATION

THE STATE OF TEXAS
COUNTY OF WEBB

NOTICE TO THE DEFENDANT: "YOU HAVE BEEN SUED. YOU MAY EMPLOY AN ATTORNEY. IF YOU OR YOUR ATTORNEY DO NOT FILE A WRITTEN ANSWER WITH THE CLERK WHO ISSUED THIS CITATION BY 10:00 A.M. ON THE MONDAY NEXT FOLLOWING THE EXPIRATION OF TWENTY DAYS AFTER YOU WERE SERVED THIS CITATION AND PETITION, A DEFAULT JUDGMENT MAY BE TAKEN AGAINST YOU."

TO: KILGORE & KILGORE TRANSPORT, LLC
BY SERVING THE TEXAS SECRETARY OF STATE
1019 BRAZOS STREET
AUSTIN TX 78701

DEFENDANT, IN THE HEREINAFTER STYLED AND NUMBERED CAUSE, YOU ARE HEREBY COMMANDED TO APPEAR BEFORE THE 341st District Court of Webb County, Texas, to be held at the said courthouse of said county in the city of Laredo, Webb County, Texas, by filing a written answer to the Petition of Plaintiff at or before 10:00 O'CLOCK A.M. of the Monday next after the expiration of 20 days after the date of service thereof, a copy of which accompanies this citation, in the Cause #: 2017CVA001187D3, styled:

RODOLFO MEDINA, PLAINTIFF

VS.

JOHN DOE AND KILGORE & KILGORE TRANSPORT, LLC, DEFENDANTS

Said Plaintiff's Petition was filed on 06/16/2017 in said court by:

KELLY FORESTER, ATTORNEY FOR PLAINTIFF
3027 MARINA BAY DR STE 320
LEAGUE CITY TX 77573

WITNESS ESTHER DEGOLLADO, DISTRICT CLERK OF WEBB COUNTY, TEXAS, Issued and given under my hand and seal of said court at office, on this the 21st day of June, 2017.

C L E R K O F C O U R T

CALENDAR CALL COURT DATE:
9/18/2017 1:30 P.M.

ESTHER DEGOLLADO
WEBB COUNTY DISTRICT CLERK
P.O. BOX 667
LAREDO, TX 78042

BY:

Herlinda Torre
HERLINDA TORRES/LV



DEPUTY

281903

2017CVA001187D3

OFFICER'S RETURN

Came to hand on the _____ day of _____, 2017 at
 _____ O'CLOCK _____ .M. Executed at
 _____, within the COUNTY of _____
 at _____ O'CLOCK _____ .M. on the _____ day of
 _____, 2017, by delivering to the within named
 KILGORE & KILGORE TRANSPORT, LLC, each, in person, a true copy
 of this citation together with the accompanying copy of the
 petition, having first attached such copy of such petition to
 such copy of citation and endorsed on such copy of citation the
 date of delivery.

The distance actually traveled by me in serving such process was
 _____ miles, and my fees are as follows:

Total Fee for serving this citation \$ _____.

To certify which, witness my hand officially.

 SHERIFF, CONSTABLE

 COUNTY, TEXAS

BY _____
 DEPUTY

THE STATE OF TEXAS)
 COUNTY OF WEBB)

Before me, the undersigned authority, on this day personally
 appeared _____, who after being duly
 sworn, upon oath said that a notice, of which the above is a
 true copy, was by him/her delivered to

_____ on the
 _____ day of _____.

SWORN TO AND SUBSCRIBED BEFORE ME on the _____ day of
 _____, _____, to certify which witness my hand and
 seal of office.

 NOTARY PUBLIC
 MY COMMISSION EXPIRES



HONORABLE BECKIE PALOMO

State District Court Judge

341st JUDICIAL DISTRICT OF TEXAS

WEBB COUNTY JUSTICE CENTER

CIVIL CASE – CALENDAR CALL SETTINGS

RE: CAUSE NO: 2017CVA001187D3

STYLE: RODOLFO MEDINA

VS

JOHN DOE AND KILGORE & KILGORE TRANSPORT, LLC

NOTICE that this case IS SET FOR CALENDAR CALL on 09/18/2017 at 1:30 PM at the 341st District Courtroom, 3rd Floor, Webb County Justice Center.

Calendar Call hearings will be in open Court and on the record before JUDGE BECKIE PALOMO. Your presence is MANDATORY unless Counsel for Plaintiff(s) file a Joint Pre-Trial Guideline Order (PTGO) with all counsels signatures on the PTGO.


You may download the PTGO at our website:
http://www.webbcountytexas.gov/DC341st/Links/civ_Jury%20PTGO.pdf

Counsel for Plaintiff(s): if you do not appear for calendar call, your case may be dismissed for lack of prosecution.

Counsel for Defendant(s): if you do not appear for calendar call, a pre-trial guideline order may be entered with or without your approval and/or signature.

Call the court for jury selection dates and pre-trial hearing dates. Keep in mind jury selection must be set within the timeframes recommended by the Texas Supreme Court.

If there are any questions regarding this matter please feel free to call the court at the number below.


Magdalena Martinez
Civil Court Coordinator
(956)523-4328

DC: 

SERVE
2017CVA001187D3

CITATION

THE STATE OF TEXAS
COUNTY OF WEBB

NOTICE TO THE DEFENDANT: "YOU HAVE BEEN SUED. YOU MAY EMPLOY AN ATTORNEY. IF YOU OR YOUR ATTORNEY DO NOT FILE A WRITTEN ANSWER WITH THE CLERK WHO ISSUED THIS CITATION BY 10:00 A.M. ON THE MONDAY NEXT FOLLOWING THE EXPIRATION OF TWENTY DAYS AFTER YOU WERE SERVED THIS CITATION AND PETITION, A DEFAULT JUDGMENT MAY BE TAKEN AGAINST YOU."

TO: KILGORE & KILGORE TRANSPORT, LLC
BY SERVING THE TEXAS SECRETARY OF STATE
1019 BRAZOS STREET
AUSTIN TX 78701

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RODOLFO MEDINA, PLAINTIFF

VS.

JOHN DOE AND KILGORE & KILGORE TRANSPORT, LLC, DEFENDANTS

Said Plaintiff's Petition was filed on 06/16/2017 in said court by:

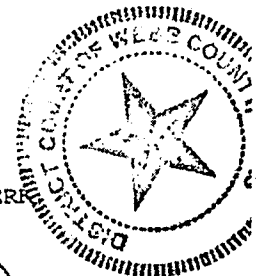
KELLY FORESTER, ATTORNEY FOR PLAINTIFF
3027 MARINA BAY DR STE 320
LEAGUE CITY TX 77573

WITNESS ESTHER DEGOLLADO, DISTRICT CLERK OF WEBB COUNTY, TEXAS, Issued and given under my hand and seal of said court at office, on this the 21st day of June, 2017.

C L E R K O F C O U R T

CALENDAR CALL COURT DATE:
9/18/2017 1:30 P.M.

ESTHER DEGOLLADO
WEBB COUNTY DISTRICT CLERK
P.O. BOX 667
LAREDO, TX 78042



BY:

Herlinda Torres
HERLINDA TORRES/LV

DEPUTY

281903

2017CVA001187D3

OFFICER'S RETURN

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 _____ O'CLOCK _____ .M. Executed at
 _____, within the COUNTY of _____
 at _____ O'CLOCK _____ .M. on the _____ day of
 _____, 2017, by delivering to the within named
 KILGORE & KILGORE TRANSPORT, LLC, each, in person, a true copy
 of this citation together with the accompanying copy of the
 petition, having first attached such copy of such petition to
 such copy of citation and endorsed on such copy of citation the
 date of delivery.

The distance actually traveled by me in serving such process was
 _____ miles, and my fees are as follows:

Total Fee for serving this citation \$ _____.

To certify which, witness my hand officially.

 SHERIFF, CONSTABLE

 COUNTY, TEXAS

BY _____
 DEPUTY

THE STATE OF TEXAS)
 COUNTY OF WEBB)

Before me, the undersigned authority, on this day personally
 appeared _____, who after being duly
 sworn, upon oath said that a notice, of which the above is a
 true copy, was by him/her delivered to

_____ on the
 _____ day of _____.

SWORN TO AND SUBSCRIBED BEFORE ME on the _____ day of _____
 _____, to certify which witness my hand and
 seal of office.

 NOTARY PUBLIC
 MY COMMISSION EXPIRES



HONORABLE BECKIE PALOMO

State District Court Judge

341st JUDICIAL DISTRICT OF TEXAS

WEBB COUNTY JUSTICE CENTER

CIVIL CASE – CALENDAR CALL SETTINGS

RE: CAUSE NO: 2017CVA001187D3

STYLE: RODOLFO MEDINA

VS

JOHN DOE AND KILGORE & KILGORE TRANSPORT, LLC

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Counsel for Plaintiff(s): if you do not appear for calendar call, your case may be dismissed for lack of prosecution.

Counsel for Defendant(s): if you do not appear for calendar call, a pre-trial guideline order may be entered with or without your approval and/or signature.

Call the court for jury selection dates and pre-trial hearing dates. Keep in mind jury selection must be set within the timeframes recommended by the Texas Supreme Court.

If there are any questions regarding this matter please feel free to call the court at the number below.


Magdalena Martinez
Civil Court Coordinator
(956)523-4328

DC: 

FI
6/16/2017 2:45:16 I
Esther Degollia
District Clk
Webb Distr
Linda Torr
2017CVA001187C

CAUSE NO. _____

RODOLFO MEDINA	§	IN THE DISTRICT COURT OF
	§	
VS.	§	WEBB COUNTY, TEXAS
	§	
JOHN DOE AND KILGORE & KILGORE TRANSPORT, LLC	§	_____ JUDICIAL DISTRICT

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, RODOLFO MEDINA, Plaintiff, complaining of JOHN DOE, and KILGORE & KILGORE TRANSPORT, LLC, Defendants. Plaintiff would respectfully show the Court and Jury the following:

1.

Your Plaintiff is a resident and citizen of the State of Texas.

Your Defendant KILGORE & KILGORE TRANSPORT, LLC, a foreign limited liability corporation organized and existing under the laws of the Arkansas, whose home office address is 159 Cash St., Harrison, Boone County, Arkansas 72601, may be served with process herein by serving the Texas Secretary of State, 1019 Brazos Street, Austin, Travis County, Texas 78701, as its agent for service because Defendant, who has engaged in business in Webb County, Texas, has not designated or maintained a registered agent for service of process in Texas as required by statute.

Defendant, JOHN DOE, is a natural person whose residence is currently unknown, but is believed to be a resident of Texas. Service is not requested at this time.

Pursuant to Tex. R. Civ. P. 190, discovery in this cause is intended to be conducted under Level 3.

2.

Plaintiff would show that venue is proper in Webb County, Texas under the provisions of TEX. CIV. PRAC. & REM. CODE, Ch. 15, §§ 15.001, et seq., because the collision made the basis of this lawsuit occurred in Webb County, Texas.

3.

Plaintiff seeks only monetary relief over ONE MILLION and no/100 dollars (\$1,000,000.00), including damages of any kind, penalties, costs, expenses, pre-judgment interest and attorney fees.

4.

It has become necessary to bring this suit by reason of injuries and damages sustained by your Plaintiff on or about May 9, 2016. Plaintiff would show that on or about that date, Plaintiff was sitting in the passenger seat of a parked tractor trailer. The incident occurred at the 13117 block of Spivey Dr. in Laredo, Webb County, Texas, when Defendant JOHN DOE failed to control speed and struck the vehicle in which Plaintiff was a passenger with great force and violence.

5.

Your Plaintiff would show that nothing he did nor failed to do caused or in any way contributed to cause the occurrence in question or the resulting injuries and damages he sustained. On the contrary, the occurrence in question, and the injuries and damages suffered by your Plaintiff were proximately caused by the total negligence and carelessness of Defendants, in that Defendants failed to exercise ordinary care for persons

similarly situated to your Plaintiff, including your Plaintiff, in one or more of the following respects:

- (1) In that JOHN DOE, maintained the vehicle which he was driving at an excessive rate of speed immediately prior to the collision, TEX. TRANS. CODE § 542.206;
- (2) In that JOHN DOE, failed to make timely and proper application to the brakes of the vehicle which he was driving at the time of the collision, TEX. TRANS. CODE § 547.401;
- (3) In that JOHN DOE, operated the vehicle which he was driving in a careless and reckless manner, TEX. TRANS. CODE § 545.401;
- (4) In that JOHN DOE, failed to keep a proper lookout for other vehicles at the time of and on the occasion made the basis of this suit;
- (5) In that JOHN DOE, failed to keep the vehicle which he was driving under reasonable and proper control;
- (6) In that JOHN DOE, failed to reduce the speed of the vehicle which he was driving immediately prior to the aforesaid collision to a rate of speed that would be reasonable and prudent under the same or similar circumstances, TEX. TRANS. CODE § 545.357;
- (7) In that JOHN DOE, failed to sound a warning when it first became evident that he was going to collide with another vehicle, TEX. TRANS. CODE § 547.501; and
- (8) In more particularity to be shown at the time of trial.

Each and all of the above and foregoing acts, both of omission and commission, were negligent and constituted negligence and were each and all a proximate cause of the occurrence made the basis of this suit and the damages and injuries suffered by your Plaintiff herein.

6.

Furthermore, Defendant KILGORE & KILGORE TRANSPORT, LLC, is legally responsible to your Plaintiff for the negligent conduct of JOHN DOE under the legal

doctrines of respondeat superior, agency and/or ostensible agency, because JOHN DOE was at all times material hereto an agent, ostensible agent, servant, and/or employee of KILGORE & KILGORE TRANSPORT, LLC, and was acting within the course and scope of his employment. Further, the truck being operated by JOHN DOE was owned, maintained and/or operated by KILGORE & KILGORE TRANSPORT, LLC, and KILGORE & KILGORE TRANSPORT, LLC, is responsible to your Plaintiff for his damages for any negligent maintenance of the vehicle or supervision of JOHN DOE, which was a proximate cause of the occurrence in question.

Additionally, Defendant KILGORE & KILGORE TRANSPORT, LLC, failed to exercise ordinary care in entrusting its vehicle to the Defendant JOHN DOE when it knew in the exercise of ordinary care or should have known that Defendant JOHN DOE was an unsafe driver and thus, are liable for negligent entrustment as that term is defined under the laws of the State of Texas.

cause of the occurrence in question.

Additionally, Defendant KILGORE & KILGORE TRANSPORT, LLC, failed to properly train and supervise Defendant JOHN DOE.

7.

All conditions precedent to Plaintiff's cause of action have been performed or have occurred.

8.

Your Plaintiff has been damaged as a result of the occurrence made the basis of this lawsuit and the negligence of your Defendants. Your Plaintiff has suffered all legal elements of damages recognized by law, including, without limitation, physical pain and

mental anguish, physical impairment, disfigurement, loss of ability to perform household services, loss of earnings or earning capacity, has incurred reasonable and necessary medical bills and expenses and will, in all reasonable probability, continue to suffer some or all of said legal elements of damages in the future beyond the date of trial of this cause. Accordingly, your Plaintiff maintains this suit against your Defendants for each of his foregoing legal elements of damages in a just and reasonable sum to be determined under the sound discretion of the jury far in excess of the jurisdictional minimal of this Honorable Court. Further, your Plaintiff maintains this suit for pre-judgment and postjudgment interest of his damages as authorized by law.

9.

Pursuant to TEX. CIV. PRAC. & REM. CODE § 30.014, the last three digits of Plaintiff's driver's license are 447, and the last three digits of Plaintiff's Social Security number are 876.

WHEREFORE, your Plaintiff prays that your Defendants be cited in terms of law to appear and answer herein, and that upon final trial hereof, he have judgment as prayed for against your Defendants; that he have pre-judgment interest on said judgment as authorized by law; that he have interest on said judgment at the legal rate from date of entry until paid; that he have his costs of court; and that he have such other and further relief, general or special, legal or equitable, to which he may show himself justly entitled and for which he will ever pray.

Respectfully submitted,

MATTHEWS & FORESTER

/s/ Kelly Forester

KELLY FORESTER

TBA# 00787482

3027 Marina Bay Drive, Suite 320

League City, Texas 77573

(281) 535-3000

FAX: (281) 535-3010

kforester@matforlaw.com

ATTORNEYS FOR PLAINTIFF

2017CVA001187D3

RODOLFO MEDINA	§	IN THE DISTRICT COURT
	§	
V.	§	341 ST JUDICIAL DISTRICT
	§	
JOHN DOE AND	§	
KILGORE & KILGORE TRANSPORT,	§	WEBB COUNTY, TEXAS
LLC.		

**DEFENDANT, KILGORE & KILGORE TRANSPORT, LLC'S
VERIFIED ORIGINAL ANSWER, RULE 193.7 NOTICE, JURY DEMAND, AND
REQUEST FOR DISCLOSURE**

TO THE HONORABLE JUDGE OF SAID COURT:

COME NOW, **KILGORE & KILGORE TRANSPORT, LLC** Defendant in the above-entitled and numbered cause, and for answer to the Plaintiffs' pleading on file herein, would respectfully show unto the Court as follows:

GENERAL DENIAL

Pursuant to Rule 92 of the Texas Rules of Civil Procedure, Defendant generally denies each and every allegation contained in Plaintiff's most recently filed petition, and respectfully demand that Plaintiff be required to prove the charges and allegations against Defendant by a strict preponderance of the evidence, as is required by the Constitution and the laws of the State of Texas.

AFFIRMATIVE DEFENSES AND/OR VERIFIED DENIALS

I.

By way of further affirmative defense, while continuing to deny liability as indicated above, Defendant contend that any recovery by Plaintiffs of pre-judgment interest is limited by the dates and amounts set forth in Art. 5609-1.05, Section 6, Tex. R. Civ. Stat., and Chapter 304 of the TEXAS FINANCE CODE.

II.

Pleading further, if same be necessary, Defendant asserts that any recovery of medical expenses by Plaintiffs be limited to those amounts that are both reasonable and necessary and actually paid or incurred by or on behalf of the Plaintiff as mandated by Section 41.0105 of the Texas Civil Practice and Remedies Code.

III.

By way of further affirmative defense, while continuing to deny liability as indicated above, Defendant contends that should Plaintiff seek to recover loss of earnings, loss of earning capacity, loss of contributions of a pecuniary value, and/or loss of inheritance, that this Court require any evidence to prove such loss be presented in the form of a net loss after reduction for income tax payments or unpaid tax liability, pursuant to Texas Civil Practice and Remedies Code §18.091. Moreover, Defendant requests the Court to instruct the jury that any recovery for compensatory damages sought by any Plaintiff is subject to federal or state income taxes.

IV.

By way of further affirmative defense, while continuing to deny liability as indicated above, Defendant asserts and reserves the right to: a) seek contribution as against any or all other parties, for the percentage of liability, if any, allocated to those parties; and b) submit issues to the jury of the alleged negligence of any settling party, and/or any other party hereto; c) seek the proportionate reduction of any damages found against them, based upon the percentage of negligence attributable to any settling party and/or any other party hereto.

V.

By way of further affirmative defense, while continuing to deny liability as indicated above, Defendant contends that at the time and on the occasion in question, there was a failure on the part of the Plaintiff to exercise that degree of care which an ordinarily prudent person would have exercised under the same or similar circumstances, which negligence solely caused

or proximately caused or contributed to any or all of the injuries or damages sustained, and therefore Plaintiff's recovery should be barred or reduced proportionately in accordance with Chapter 33 of the Texas Civil Practice and Remedies Code. Defendant hereby invokes the doctrine of comparative and/or contributory negligence.

Pursuant to, and in accordance with, the foregoing affirmative defense, Defendant specifically invokes and reserves the following rights as set forth in Chapter 33, including but not limited to:

- A) Section 33.003, which requires the determination of the percentage of responsibility of each party;
- B) Section 33.001, which provides that any plaintiff may not recover damages if his/her/their percentage of responsibility is greater than 50 percent;
- C) Section 33.013(a), which provides that a defendant is liable to a plaintiff/intervenor only for the percentage of damages found by the trier of fact equal to that defendant's percentage of responsibility; and
- D) Section 33.012(a) and (b) providing for reduction of any recovery by a plaintiff/intervenor by his/her percentage of responsibility, and by any settlements.

VI.

By way of further affirmative defense, while continuing to deny liability as indicated above, Defendant contends that the damages and injuries, if any, that Plaintiff is alleging is the result of a condition(s) existing before, and/or arising subsequent to the alleged occurrence in question and Plaintiffs' damages, if any, are the result of a pre-existing and/or subsequent condition, accident, or occurrence, and were not proximately caused by the alleged occurrence in question.

VII.

By way of further affirmative defense, while continuing to deny liability as indicated above, Defendant identifies the "John Doe" as:

Larry Larue
22 Meadow Lark
Harrison, AR 72601

REQUEST FOR DISCLOSURE

Plaintiff is requested to disclose, within thirty (30) days of service of this request, the information or material described in Rule 194.2(a)-(l) of the Texas Rules of Civil Procedure.

RULE 193.7 NOTICE

Pursuant to Texas Rules of Civil Procedure 193.7, Defendant gives notice to Plaintiff that any and all documents and things produced by Plaintiff may be used at any pretrial proceeding and/or the trial of this case without the necessity of authenticating said documents and things.

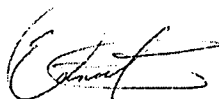
JURY DEMAND

Pursuant to Rule 216 of the Texas Rules of Civil Procedure, Defendant hereby makes demand and application for jury trial.

WHEREFORE, PREMISES CONSIDERED, Defendant, KILGORE & KILGORE TRANSPORT, LLC, pray that upon final hearing hereof, Defendant have judgment that Plaintiff take nothing by way of this cause of action, and that Defendant go hence without day for costs.

Respectfully submitted,

LAW OFFICE OF MARK E. MACIAS
1100 NORTHWEST LOOP 410, SUITE 370
SAN ANTONIO, TX 78213-2200
(210) 949-0166
(855) 949-1338 FACSIMILE
EMAIL: guarad1@nationwide.com

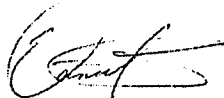


By: _____
DANIEL J. GUARASCI, SR.
State Bar No. 24014842
ATTORNEY FOR DEFENDANTS
KILGORE & KILGORE TRANSPORT, LLC

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been forwarded to the following in accordance with the Texas Rules on the 18th of August, 2017.

Kelly Forester
MATTHEWS & FORESTER
3027 Marina Bay Drive, Suite 320
League City, Texas 77573
281-535-3000
281-535-3010 Fax
Email: kforester@matforlaw.com
Attorney for Plaintiff



DANIEL J. GUARASCI

2017CVA001187D3

RODOLFO MEDINA	§	IN THE DISTRICT COURT
	§	
V.	§	341 ST JUDICIAL DISTRICT
	§	
JOHN DOE AND	§	
KILGORE & KILGORE TRANSPORT,	§	WEBB COUNTY, TEXAS
LLC.		

AFFIDAVIT OF RON KILGORE

STATE OF ARKANSAS

COUNTY OF Boone

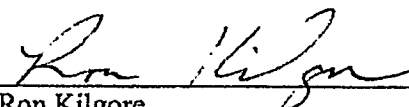
BEFORE ME, the undersigned Notary Public, on this day personally appeared
Ron Kilgore, who, being by me duly sworn, deposed as follows:

"My name is Ron Kilgore. I am over eighteen (18) years of age, of sound mind, capable of making this affidavit, and personally acquainted with the facts stated in it. I am an authorized representative Kilgore & Kilgore Transport, LLC. In this lawsuit, I was served with Plaintiff's Original Petition. The Petition alleges that John Doe failed to control speed and struck the vehicle in which Plaintiff was a passenger. I am unsure as to why Plaintiff names a "John Doe" when the driver's involved exchanged contact and insurance information. However, the following is the identity of the named "John Doe" and his last known residence/locale:

Larry Larue
22 Meadow Lark
Harrison, AR 72601

I have read paragraph VII of Defendant's Original Answer and it is true and correct.

Further affiant sayeth not."



Ron Kilgore

SUBSCRIBED AND SWORN TO BEFORE ME on this 18th day of August,
2017.

Cassie Powers
NOTARY PUBLIC, in and for
The State of Arkansas

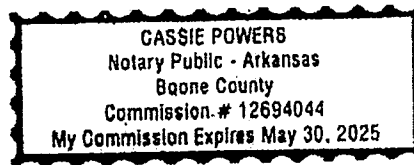


EXHIBIT C

[Skip to Main Content](#) [Logout](#) [My Account](#) [Search Menu](#) [New Civil Search](#) [Refine Search](#) [Back](#)

Location : All Courts [Help](#)

REGISTER OF ACTIONS

CASE No. 2017CVA001187D3

RODOLFO MEDINA vs. JOHN DOE,KILGORE & KILGORE TRANSPORT, LLC

§
§
§
§
§

Case Type: Injury or Damage - Motor Vehicle
Subtype: Motor Vehicle Accident
Date Filed: 06/16/2017
Location: --341st District Court

PARTY INFORMATION

Defendant	DOE, JOHN	Attorneys DANIEL J GUARASCI Retained 2109490166 x8559491338(W)
Defendant	KILGORE & KILGORE TRANSPORT, LLC	DANIEL J GUARASCI Retained 2109490166 x8559491338(W)
Plaintiff	MEDINA, RODOLFO	KELLY FORESTER Retained

EVENTS & ORDERS OF THE COURT

OTHER EVENTS AND HEARINGS			
06/16/2017	Civil Case Filed (OCA)		
06/16/2017	Original Petition		
	PLAINTIFF'S ORIGINAL PETITION, CCIS, AND FILING LETTER FROM ATTORNEY KELLY FORESTER (LV)		
06/21/2017	Calendar Call		
	CALENDAR CALL MAILED TO ATTORNEY KELLY FORESTER AND ATTACHED A COPY TO THE CITATION ISSUED. (LV)		
06/21/2017	Citation-Issuance		
	(2) CITATIONS ISSUED AS TO KILGORE & KILGORE TRANSPORT, LLC BY SERVING TEXAS SECRETARY OF STATE AND HELD BY DISTRICT CLERK (LV). WAITING ON A SELF ADDRESSED STAMPED ENVELOPE FROM ATTORNEY KELLY FORESTER. (LV)		
	***CITATIONS PLACED IN PRIVATE SERVER BOX ON 07/27/2017. (LT)		
06/21/2017	Citation		
	KILGORE & KILGORE TRANSPORT, LLC	Served Returned	07/28/2017 08/11/2017
08/11/2017	Citation Return-Executed		
	CITATION RETURN EXECUTED AS TO KILGORE & KILGORE TRANSPORT LLC, BY SERVING TEXAS SECRETARY OF STATE. (DOS 7/28/17).		
08/18/2017	Answer-Defendant		
	DEFENDANT, KILGORE & KILGORE TRANSPORT, LLC'S VERIFIED ORIGINAL ANSWER, RULE 193.7 NOTICE, JURY DEMAND, AND REQUEST FOR DISCLOSURE.		
09/18/2017	Calendar Call (1:30 PM) (Judicial Officer Palomo, Beckie)		

EXHIBIT D

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
LAREDO DIVISION

RODOLFO MEDINA
Plaintiff.

v.

JOHN DOE AND KILGORE & KILGORE
TRANSPORT, LLC
Defendant.

§
§
§
§
§
§
§
§

CIVIL ACTION NO. _____

LIST OF COUNSEL OF RECORD

ATTORNEY FOR DEFENDANT,
KILGORE & KILGORE
TRANSPORT, LLC

Shan Marie Egliskis
LAW OFFICE OF MARK E. MACIAS
1100 Northwest Loop 410, Suite 370
San Antonio, TX 78213-2200
210.949.0166
855.949.1338 Facsimile
Email: egliss1@nationwide.com
State Bar No. 24059712

ATTORNEY FOR PLAINTIFF,
RODOLFO MEDINA

Kelly Forester
MATTHEWS & FORESTER
3027 Marina Bay Drive, Suite 320
League City, Texas 77573
281-535-3000
281-535-3010 Fax
Email: kforester@matforlaw.com
State Bar No. 00787482

EXHIBIT E

Proof of Submission

Submission ID: 19046330

Submission Date and Time: 08/24/17 08:22 AMCDST



Case Information

Case Title:
Jurisdiction: Webb County - District Clerk
Case Category: Civil - Injury or Damage
Case Type: Motor Vehicle Accident

Client ID: 17-017841
Cause No: 2017CV001187D3
Attorney: Daniel J Guarasci
Filer: Olga Estes
Payment Account: Card

Fees Breakdown

Court Fees

No Fee Documents

Filing Fee	\$0.00
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Total Fee For This Filing**\$0.00**

Submission Fees

Court Service Fee	\$2.00
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eFiling Manager Convenience Fee	\$0.15
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FileTime Service Fee	\$2.99
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Sales Tax on FileTime Fee	\$0.25
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Total Submission Fees**\$5.39****Total Fees for this Submission****\$5.39**

Case Parties

Party Type	Name	Our Client
Plaintiff	Rodolfo Medina	No
Defendant	Kilgore & Kilgore Transport, LLC	Yes
Defendant	John Doe	No

Filings

Filing Type: eFile & eServe

Filing Documents

No Fee Documents	Document	Type	Security
	Ntc to State Crt re Removal to Federal Court.pdf	Lead Document	Does not contain sensitive data

Filing Comments:

Credit Card Information Breakdown

Your credit card statement will show:

Pleading

Jurisdiction (TXERLE)	\$2.00
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eFiling Manager (Tyler (TX)file Conv Fee)	\$3.39
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Service Contacts

Name	Firm Name	Case Party	Email
Daniel Guarasci	Law Office of Mark E. Macias	Kilgore & Kilgore Transport, LLC	guarad1@nationwide.com
Helena Chibas	Law Office of Mark E. Macias	Kilgore & Kilgore Transport, LLC	chibah1@nationwide.com

Notes

The above fees are estimates only and are subject to change after clerk review. You should not use this page for billing purposes. Your firm eFiling Administrator should run a billing report under Admin > Reports.

Service Recipients

Name	Firm Name	Case Party	Email
Kelly Patrick Forester	Matthews & Forester	N/A	kforester@matforlaw.com

Fax Services

Name	Fax Number	Status
Kelly Forester	(281) 535-3010	Pending

2017CVA001187D3

RODOLFO MEDINA	§	IN THE DISTRICT COURT
	§	
V.	§	341 ST JUDICIAL DISTRICT
	§	
JOHN DOE AND KILGORE & KILGORE	§	
TRANSPORT, LLC.	§	WEBB COUNTY, TEXAS

NOTICE TO STATE COURT OF REMOVAL TO FEDERAL COURT

Pursuant to 28 U.S.C. §§ 1332 and 1446, you are hereby notified that on August 22, 2017, Defendant, **KILGORE & KILGORE TRANSPORT, LLC** filed its *Defendant's Notice of Removal* to remove this state-court proceeding to the United States District Court for the Southern District of Texas, Laredo Division. A copy of such notice and other papers are attached hereto as **Exhibit "A"** and should be filed by you with the papers in this cause. Upon the filing of the Notice of Removal, removal has been effected pursuant to 28 U.S.C. §1446(d).

Respectfully submitted,

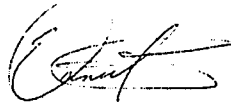
/s/ SHAN MARIE EGLISKIS

SHAN MARIE EGLISKIS
Texas State Bar No. 24059712
DANIEL J. GUARASCI
Texas State Bar No. 24014842
LAW OFFICE OF MARK E. MACIAS
1100 NW Loop 410, Suite 370
San Antonio, Texas 78213
Telephone: 210-949-0166
Facsimile: 855-949-1338
Email: egliss1@nationwide.com
Guarad1@nationwide.com
ATTORNEY FOR DEFENDANT
KILGORE & KILGORE TRANSPORT, LLC

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been forwarded to the following in accordance with the Texas Rules on the 24th of August, 2017.

Kelly Forester
MATTHEWS & FORESTER
3027 Marina Bay Drive, Suite 320
League City, Texas 77573
281-535-3000
281-535-3010 Fax
Email: kforester@matforlaw.com
Attorney for Plaintiff



DANIEL J. GUARASCI